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No. _____

# In the

# Supreme Court of the United States.

OCTOBER TERM, 1992.

ZIBA BENNETT PHELPS III, PRO-SE
PETITIONER,

*v.*

SOVRAN BANK, N.A.
Leesburg, Virginia
(NOW NATIONS BANK)
OF COUNSEL HENRY COUNTS, JR.
RESPONDENT.

**Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.**

## Petition for Writ of Certiorari

ZIBA BENNETT PHELPS III, PRO-SE
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December _____, 1992

41 pp

## Questions Presented.

(1) When a Respondent (Appellee) does not file an answer brief nor register an attorney of record, may an Appeals Court by denying an appeal uphold a void default judgment due to substitute service not being according to Virginia Statute? The bankruptcy court erred by upholding a creditor with a void default judgment who had no right to presence. This is denial of due process covered under Constitution Article IV, Section 1 and of Amendments, Article V. When the Respondent did not make an appearance, it was in default in the 4th Circuit Court of Appeals, yet that court upheld the Respondent.

(2) When Justices PHILLIPS and WILKINSON did not recuse themselves as per the request in the Appeal Brief for being biased and prejudicious to the Petitioner in a previous appeal which came to this Court as Writ 90-101, is the decision on this matter the result of a fair and impartial hearing? This was further brought to the 4th's attention in the Petition for Rehearing with due attention given to recusing.

(3) May the 4th Circuit Court of Appeals deny the request for production of documents and then use this secret memo in their decision along with a secret letter the Petitioner acquired by accident? The letter was the Respondent's answer to the U.S. District Court Judge's order on why it did not file an answer or make an appearance. It is on this letter and the unknown memo the District Court ruled, as did the 4th Circuit Court of Appeals. The Petitioner has no defense against secrecy and cannot reply to what he has not seen.

(4) In all three Federal Courts, there has never been an opinion, except in the last two courts where it is said the appeal is "meritless"; in the 4th it goes on to say in Appellant's argument that Appellee's default judgment rendered in state court was void *ab initio* for lack of personal jurisdiction over the Appellant is false and this is contrary to photocopy evidence presented, and the Petitioner has the

why this evidence is void. This evidence upholds Rule 55 of the Rules of Civil Procedure that there must be jurisdiction, and *Yox* v. *Durgan* (298 F.Supp. 1365). Service of Process must be according to state statute for a default judgment to be valid before it can be brought into a Federal court. Where is the 4th's opinion other than to say it is "meritless"?

(5) In the U.S. District Court, the Petitioner and later his counsel were never allowed to present their case or to present the original evidence. The record supports this. The only way the Petitioner's argument got into the record was it was written out and presented to the District Judge before counsel started his argument. Counsel was never allowed to present his oral argument, as he was stopped by the Judge. However, the written argument was now in the record. Is this conduct by the District Court fair and impartial, and also wasn't due process suspended at that point?

(6) Even a cursory investigation of the proceedings in the 4th Circuit and U.S. District Court would invite impeachment of those denying due process in the judicial decision. No recusing, a secret letter from the Respondent to the Judge which is an opinion, a secret memo denied the Petitioner who requested it, no allowing of the case to be presented in court, and no opinion other than to say it is "meritless" when there is fact to support the statements, a secret memo that is believed to have come from the Chief Justice of this Court, is not all this denying due process for a Petitioner? Without an opinion the only conclusion for this behavior is that the fix is in. This is not Constitutionally allowed. A *per curiam* opinion is an attempt at trial in secrecy when it is unpublished.

(7) When the district court has to order the defendant to submit an answer on which the court will rule and never gives the plaintiff the opportunity to reply to that answer, the court takes over the case and becomes judge and litigant. How can a court be fair and impartial when it has become a party to

a court be fair and impartial when it has become a party to one of the sides in litigation and uses a secret letter and memo not available to the plaintiff?

(8) Likewise, as in the above when the 4th Circuit Court upholds the decision in the district court, uses the secret letter and memo, never allows the Petitioner the production of documents (memo), quotes from the secret letter, and rules in favor of the Respondent who never makes an appearance, never writes an answer, nor registers its counsel, is this not a court being a judge and litigant in the same action? The purpose of a court and its judges is to rule as a disinterested party, not as a party to the litigation. When a court becomes a litigant, it cannot rule against itself, and any decision must therefore be biased. A biased court and its judge renders it decision void at the start. The 4th Circuit sustains this error in the lower court.

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## Petition for Writ of Certiorari

### Opinions Below.

The OPINION of the U.S. Court of Appeals for the Fourth Circuit is an unpublished *per curiam* opinion in Case No. 91-2206 denied September 4, 1992 and the *PER CURIAM* OPINION is factually untrue as the Appellant had waivered discharge to pursue the validity of the Appellee's claim; there is no opinion from the district court Case No. CA-90-0114-A

although the Appellant requested one in his MOTION TO RECONSIDER AND REQUEST FOR REHEARING; and there is no opinion from the bankruptcy court Case No. 86-01779-AB, Chapter 13.

## Jurisdiction.

The decision of the U.S. Court of Appeals for the 4th Circuit was entered September 4, 1992; a petition for rehearing denied September 29, 1992; and the mandate entered filed October 6, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## Constitutional Provisions.

The Constitution of the United States provides certain rights which are applicable to this Petition and these are enumerated in the Constitution Article IV, Section 1 and Amendments; Articles I, IV, V, VI, and VII. The United States Government holds the wife of the Petitioner in a form of kidnapping and as a hostage by means of the U.S. Marshals and there is rock solid and courthouse proof this is so. This Government now wishes to suspend due process by ruling against the Petitioner when the Respondent doesn't even show in the U.S. District Court and the court has to order it to write a response to the court, and in so doing there are secret communications from it to the court. In the 4th Circuit Court of Appeals the Respondent never files a brief or registers a counsel of record, yet the 4th rules in the favor of the Respondent. This is in spite of the fact that the Respondent has a void judgment in the state court which is being pursued in the Federal courts. The 4th has upheld an illegal act in the state court. The actions in the Federal courts strongly indicate there is a conspiracy to seize the assets of an enormous

inheritance by using a minor case to wipe out the assets produced by the Petitioner in his life.

## Recusing of Supreme Court Justices.

The U.S. Marshals are under the Department of Justice and the Director is responsible to the U.S. Attorney-General. However, they are also the administrative and enforcement arm of the Federal Courts which direct their actions. As stated before, there is rock solid and courthouse proof that the Petitioner's wife, Marie, is held by the U.S. Marshals in supposed protective custody but actually as a hostage. The Virginia State Police found her in 1988 and were called off by powers in Richmond. This could not exist (the holding by U.S. Marshals) without the knowledge of the Attorney-General Andrew Barr, his predecessor Richard Thornburg, and the Chief Justice of the United States Supreme Court, William Renquest knowing that this is going on. They are involved. Therefore, it is requested that Chief Justice Renquest recuse himself from all these proceedings including the selection of cases to go before this Court. In case there is any doubt what 'recuse' means, it is not to do anything with this case by discussion, participation, or injecting a favor owed to Chief Justice Renquest by another justice to affect this ruling. Further, in the Writ 90-101 filed July 16, 1990 before this Court, Chief Justice Renquest failed to recuse himself, though he knew the U.S. Marshals were holding the Petitioner's wife, Marie. The Petitioner's request was for a Writ of Habeas Corpus, so that he could see his wife and also resolve dower interest matters. This Writ was denied, and the review was not impartial as the Chief Justice Renquest was involved in the holding of Marie and the denial of the Writ of Habeas Corpus.

In addition to the above, all justices that have graduated from the Yale Law School or Yale or who have participated in seminars given by Yale are requested to recuse themselves.

They are known by the Petitioner as Justices White and Thomas. The reason is that the Petitioner and Yale are recipients of certain trust or trusts and Yale has raided these trusts and many others. In addition, the Petitioner has written the Dean of Yale Law School for help in getting his wife, Marie, released, and the Dean has not responded. This is unusual because he sits on the Edward Phelps Chair given by the family to the Yale Law School. There is also another chair at the law school. Lack of morals is noted in the Yale Law School. An impartial review at the bar of justice cannot be had when the ear is listening to other voices.

## Statement of the Case.

This case starts in 1983 at a time when the Petitioner started examining certain banks in Wilkes-Barre, Pennsylvania. This is recorded in the letter to the clerk of the Loudoun County Court in 1983. In June of 1983, the Respondent (then 1st & Merchants National Bank) served the Petitioner with a Notice of Motion for Judgment by posting that was not done according to Virginia Law and there are some 5 faults in the Service of Process. Any one of these voids the default order acquired by the Respondent. The Petitioner was at a loss to what was going on, as he was trying to get counsel and did not know that he had been blacklisted by the late Edward Darling, Esq. of Wilkes-Barre, Pennsylvania. This meant that all lawyers in Virginia and the District of Columbia would not help. This was done through the railroad lawyers and counsel of the Pennsylvania, Norfolk & Western, Southern Railroads that Darling controlled as guardian of a trust for the Petitioner. The Respondent (the Bank) foreclosed on a note for $20,000.00 in the afternoon and this was after the Petitioner had seen the Vice-President James Hanna that morning and was told everything was in order. The Respondent was helping the Petitioner sell a note for $32,000.00 and had been unable to find a buyer. The

Petitioner had gone to another source and was working on a sale. There is strong reason that the Respondent never tried to sell the note in the first place. The note was a seasoned note and is still being paid on. At the time the Respondent took its action all the assets of the petitioner were in land in Warren County, Virginia. The Petitioner was, in the same time frame, working with the Director of Trust Affairs of the Comptroller of the Currency in connection with problems with the Trust Department of the Wyoming National Bank of Wilkes-Barre. Darling controlled the Wyoming National Bank through the trusts of Phelps that he was guardian for. Phelps, the Petitioner, did not know this. In August of 1983, the Respondent got a Default Judgment based on their Service of Process which was faulted and void. Then in April of 1984 the Respondent brought their void default judgment over to Warren County. The Petitioner's lawyer was scared off by someone from the court and the Petitioner had to appear Pro-Se. The night before the hearing the Petitioner was told by his counsel he would be there. He never showed. There were other things that happened also. In July of 1984, Judge Henry Whiting ruled that the land in Warren county could be sold and against the Pro-Se Petitioner. Edward Darling was known to Judge Whiting. The Petitioner's counsel had now disappeared and the Petitioner proceeded Pro-Se. The Petitioner appealed the decision in the Warren County court to the Virginia Supreme Court, as the Virginia Court of Appeals had not yet been established. In 1985 the Virginia Supreme Court ruled against the Petitioner *sua sponti*. Just 8 weeks after the ruling the Petitioner was involved in a hit where he was driven off the road by two unmarked Sheriff's cars. He received cracked ribs, internal injuries, abrasions, and a cracked skull. At the time the Petitioner thought it was because he had filed a motion for rehearing with the Virginia Supreme Court. It was not. It was because on about May 3, 1985, the Petitioner had found out he had a son by his wife, Marie in July of 1953 just before that divorce became final supposedly. This changed the Petitioner's right to the trusts created in 1933 for him. This will be covered later. The

decision of the Virginia Supreme Court was appealed to this Court and the Writ was denied. In addition to the above, there is a matter of $33,000,000.00 that was to be transferred to the Petitioner in January of 1983 from the Wyoming National Bank to the 1st & Merchants Bank of Leesburg according to counsel. The Petitioner not being a lawyer did not realize what he had done. He had appealed the ruling in the Warren County, Virginia Court and in so doing the two Supreme Courts could not rule on the appeal as they were being asked to rule on a matter that occurred after a void default judgment in the Loudoun County, Virginia Court. This would mean that the courts would have ruled on a matter that did not exist. However, at this point the Courts knew that the order of the Respondent was void.

Now the case enters the Federal Courts. In September of 1986 the Respondents started advertising the Petitioner's land in Warren County. The Petitioner had counsel at the time and they abandoned him two weeks before the date of the sale. The Petitioner sought protection in a Chapter 13 Bankruptcy. The Respondent had put him into bankruptcy. No counsel would review the judgment in the Loudoun Court, though the Petitioner had requested it. Land was sold by the Petitioner at distressed prices and the note to the Respondent was paid off. What is now left is the penalties and interest only. This is further clouded by the fact that the Petitioner found out on December 8, 1986 that the divorce from his wife Marie is void when he pulled the papers in the Mobile County Courthouse. It is primarily void because there is no mention of a child of that union. More on this later. There was an attempt to cancel a sale of land by the Warren County Health Department over septic permits. There has been courthouse influence in these matters and of course Darling was also involved. The next land sale authorized by the Bankruptcy Court was canceled, as clear title could not be obtained because the Petitioner could not take care of the dower interest problems, as he was married to Marie who was in the custody of the U.S. Marshals.

In 1988 there was an adversary proceeding in the Bankruptcy Court over the $33,000,000.00 and the request to produce the wife and son of the Petitioner. These matters were denied. Counsel Sullivan resigned and the Petitioner was back again Pro-Se. When the Petitioner was having trouble closing the last sale due to the dower interest cloud, the Bankruptcy Court refused to extend the time to complete the sale and this was in spite of the fact that the Chapter 13 Trustee refused to examine the validity of the claim of the Respondent. The Bankruptcy Court ordered the Petitioner to pay off the balance of the taxes owed on the land and that the Petitioner should get a divorce to settle his dower interest problems. Now in the summer before this hearing in November of 1988, the Petitioner on his own investigation had found that there were major discrepancies in the Service of Process as well as other matters. He wrote the counsel for the Respondent asking what amount was still owed in penalties, etc., and also that there were major discrepancies in their claim. The letter was sent twice and there has never been a reply.

In the fall of 1988 the Petitioner filed a Motion for Dismissal of the Loudoun County Court's order in the Loudoun Circuit Court and then when the Bankruptcy Court ordered the Petitioner to pay off the final money owed, the Petitioner filed a Notice for Waiver of Discharge with the Bankruptcy Court on December 27, 1988. In March of 1989, when the Bankruptcy Court attempted to discharge the Chapter 13 case, the Petitioner brought it to the clerk's attention that there was a Notice on file requesting Waiver of Discharge with the court, as is the requirement of the law. The Chapter 13 Trustee then said it had to be brought on by motion. This was done in April and the motion was strenuously objected to by the Trustee and the Counsel for the Respondent. The waiver of discharge was granted and the order signed in May 1989 overruling the other order.

While all this was going on, the Petitioner was proceeding in the state courts to rectify the void default judgment. There were multiple problems created in the Loudoun Court by the Respondent, and finally on March of 1989 the Loudoun County Circuit Court heard the case. The Petitioner, when he was starting to introduce the hard evidence of the undated Notice of Motion for Judgment used in the Service of Process by posting, was stopped by the Judge. The judge ordered the counsel for the Respondent to prepare an order to go to the U.S. Bankruptcy Court on whether the Loudoun Court should hear this case. This order was sent to the Bankruptcy Court and buried in the file and never brought to the attention of the Bankruptcy Court. The order should have been brought to the Bankruptcy Court by the Respondent's counsel in that court by motion. The Petitioner could not do it as it was the Respondent's order prepared by the Respondent for the state court and was its request.

In the meantime, the Petitioner was proceeding with a request for a Writ of Habeas Corpus through the U.S. District Court, 4th Circuit Court of Appeals, and then to this Court with a Writ of Certiorari for a Writ of Habeas Corpus that the U.S. Marshals should release his wife, Marie.

In the fall of 1989 the Leesburg counsel for the Respondent wrote a letter to the Judge of the Loudoun County Circuit Court saying that the U.S. Bankruptcy Court had ordered the case dismissed and the Loudoun Court's order to the Bankruptcy Court had not been acted on. This was in spite of the fact that the Respondent's counsel in Alexandria had been present at the hearing in April of 1989 when the Bankruptcy Court granted the waiver of discharge and had also induced the Bankruptcy Court's order signed in May 1989. The Petitioner filed a motion for protection with the U.S. Bankruptcy Court and a motion with the Loudoun County Court stating what had happened and asking for a hearing. On motions day in December 1989 in the Loudoun County Court, a hearing was scheduled in the Judge's Chambers for

the day after Christmas, but due to weather it was not held until the first week in January 1990. It was agreed that the Petitioner would proceed in the U.S. Bankruptcy Court and the case to void the default order would be stricken from the docket without prejudice in the Loudoun County Circuit Court. The Petitioner could not do much else, as the U.S. Bankruptcy Court had never issued instructions on the order from the Loudoun County Court.

Now there was an attempt by the counsel for the Respondent to get the Petitioner to sign or endorse an order to dismiss the case in Loudoun County with prejudice. The Petitioner refused to sign or endorse the order, and he wrote a letter to the Judge saying why he refused to sign. There were other attempts to present an incorrect order for the Petitioner to sign. Finally a correct order was made out, signed, and presented to the court. However, by this time it was February when the Loudoun Court case was closed. In the meantime, the hearing in the U.S. Bankruptcy Court was scheduled for January 16, 1990 to hear the motion for protection. The motion was denied and counsel for the Respondent in Alexandria had a court order prepared denying the request and it was signed by the Bankruptcy Judge at that hearing. The Petitioner does not think the Alexandria counsel knew that the Leesburg counsel did not get an order in Loudoun County Court signed with prejudice. It was mentioned that U.S. Bankruptcy Court had denied the motion on protection and the void judgment at the Loudoun County hearing in February 1990, and the Judge gave the Petitioner a smile.

The Petitioner made his request for documents and appealed the decision in the U.S. Bankruptcy case. It took a few days shy of a year to get the transcripts requested for the appeal which came in January 1991. Then in 1991, the appeal was rushed over to the U.S. District court on a Friday and the Appeal Schedule was mailed that day, and because of the mails the Petitioner did not get this schedule for 12 days.

This gave some 6 working days to write the appeal brief. The Petitioner did by scissor editing and pasting the appeal together get the appeal in within the required time. He then wrote a revised appeal brief, ran it through word processing, and had it in the U.S. District's clerk's office some 8 days later.

Now during the time that the appeal was filed, note the Respondent did not file an answer for the scheduled USDC hearing in June, the Petitioner went to Wilkes-Barre and called on Edward Darling. Darling died at that meeting, and this is more fully explained later.

At the first hearing in the U.S. District Court, the Judge would not let the Petitioner present the original undated Notice of Motion for Judgment used in the Service of Process for the Void Default Judgment obtained by the Respondent in Loudoun Court. Also the Respondent failed to be present and was itself in default. When the Judge realized there was no one there for the Respondent, he ordered the Petitioner to get counsel or he would rule on the evidence before him. Remember the Respondent had written no answer or other notice and was not present. The hearing was scheduled some ten days later.

The Petitioner went to Charles B. Sullivan Jr., Esq., and talked to him about finding an attorney. Mr. Sullivan felt that the Petitioner had been through enough and agreed to represent him at the hearing in the USDC. This was especially helpful, as he had helped in the first part of the bankruptcy proceedings and was familiar with the case. He instructed the Petitioner to prepare a written trial brief for him to present so that if something went wrong, he would have it on the record. The Petitioner did.

On June 28, 1991, Sullivan and the Petitioner went to the USDC for the hearing only to find that it had been cancelled as all the district judges for the 4th Circuit Court of Appeals

were at a convention at The Homestead. Sullivan was not notified though he had filed a precipe that he was representing the Petitioner. At this meeting at the Homestead, there also were all the Justices of the U.S. 4th Circuit Court of Appeals and Chief Justice Renquest of the U.S. Supreme Court, who is the justice responsible for the 4th Circuit. Because of the size of the Trust in Pennsylvania belonging to the Petitioner (it is in the billions), this case in the District Court was probably discussed at that meeting.

On Wednesday, July the 3rd, there was an attempt to move the USDC hearing to the 5th of July. Sullivan had other commitments and the Petitioner was at the farm. A July 14, 1991 hearing had been set when Sullivan and the Petitioner had gone to the USDC and that hearing had been canceled. There were desperate attempts to change it by the Respondent.

On July 14, 1991 Sullivan and the Petitioner were present at the USDC. Sullivan presented written copies of the Trial Brief to the Court and commenced to present it into the oral record. He was stopped by the Judge and ordered to bring in the counsel for the Respondent. There was no one there for the Respondent. Sullivan said in essence that he had no authority to bring in a reluctant Respondent. The Judge said I will order a rehearing and order the Respondent to be present. Sullivan left an order with the USDC voiding the Respondent's Default Judgment. This was never signed. The Respondent at that time was clearly in default by not being present.

The USDC issued an order ordering the Respondent to reply to the Court and to write a letter stating why it and counsel had not been present at this hearing. The Respondent wrote an answer and sent copies to Sullivan. In addition, its counsel wrote a letter to the Judge of the USDC supposedly stating why he was not present. There was never a copy of this letter sent to Sullivan, and this letter was an opinion and not an excuse. It is part of the reasons the USDC issued its denial.

The Petitioner never saw it and it was not in the file on several examinations by counsel and the Petitioner. In the process of all this there was a phone conversation between Sullivan and the Judge's clerk with the Petitioner present, in which the clerk said there was an order, a letter from the Respondent's counsel and a memo large enough to be called a volume. The Petitioner got a copy of this letter in September 1991 and has never gotten a copy of the memo, though it has been requested. The Petitioner filed a motion for rehearing which was denied. The Petitioner had never faced his accusers in the USDC.

The Petitioner then filed an appeal to the U.S. 4th Circuit, and since the Petitioner was Pro-Se, the clerk elected to have the case filed in the informal form. The Petitioner had to file a motion with the 4th Circuit to have the brief filed in the formal manner, and he also filed a motion for production of documents which were for the letter of the Respondent to the USDC judge and the memo that was in the case file when Sullivan called the judge's chambers. The motion for a formal brief was granted by the clerk and the production of documents was denied. Also there was a question about the stenographer's record of the USDC proceedings not being ready within the time limit to file the brief. On questioning the assistant clerk of the 4th, the Petitioner was told that he would have to pursue this with the Clerk of the USDC and that the whole record would not be sent to Richmond.

The Petitioner went to the clerk's office of the USDC and examined the case file again. This time on examining the file and reading the court-ordered response of the Respondent he moved the back of the response and the letter moved from behind the response. It was as if corn starch had been placed on the letter. It was stuck to the back of the response but not tightly. The Petitioner got a copy of the letter and noted that it had been stamped by the clerk's office on receipt but not recorded on the docket sheet. The Petitioner had been given some excuse over the phone before coming to the clerk's

office that letters do not have to be recorded on the docket. The memo was nowhere to be found. The Petitioner sent a copy to the clerk's office of the U.S. 4th Circuit Court of Appeals with a note and waited for the transcript. On doing some investigation it was reported that it was delivered by the U.S. Marshals and most likely came from the Chief Justice's Office. This was not confirmed but the memo was not delivered by the FBI. If the U.S. Marshals are lying about having the Petitioner's wife, Marie, in their custody, this then would seem like nothing. On November 15, 1991, the Petitioner delivered the Appeal Brief to the 4th in Richmond. At the end of 30 days, the Respondent did not file an answer brief and the Petitioner filed a Reply Brief so noting. Also the Respondent never filed an attorney of record with the 4th, although it was requested several times by the 4th.

On March 23, 1992, the Petitioner filed a motion for punitive sanctions with the 4th Circuit Court of Appeals, as papers had been filed for improper purposes by the Respondent.

On May 26, 1992, the case was submitted to the Justices of the 4th and it was heard by Justices PHILLIPS, WILKINSON, and WILLIAMS. Justices PHILLIPS and WILKINSON had been asked to recuse themselves as they had heard the appeal on the Writ of Habeas Corpus with Chief Judge Ervin and this opinion had been prejudiced towards the Petitioner, and it was known that the U.S. Marshals were holding the Petitioner's wife. Chief Justice ERVIN did recuse himself in this case. One wonders if the court was unable to get justices to hear the case. On September 4, 1992, the court issued its opinion and it was an unpublished *per curiam* opinion. The Petitioner had gone to great pains not to have this happen, as the intent of the court was to have this case swept under the table without a fair hearing. In their unpublished opinion, the court lists Henry Counts, Jr. as counsel for the Respondent and he never filed an answer or filed as counsel of record. There was no one from the Respondent and their opinion is at error there,

as the Respondent by default has failed to make a motion in the 4th Circuit Court. The 4th also notes that the Respondent (Appellee) did not file a brief. The only opinion the 4th gives is to quote the USDC and say this appeal is without merit. Under the asterisk, the 4th quotes "silly" with quotation marks from the secret letter of the Respondent to the judge of the USDC, and this means they have read this letter. There is no mention of the secret memo nor is there an attempt to produce it, though it was asked for in the appeal.

Further, there is a judicial truth that applies here. A void default judgment from a state court cannot be entered in a Federal court, as this is pursuing an illegal act that the state court will not sanctify into a Federal court to gain satisfaction, thereby making the Federal court a party to an illegal act. One does not dirty the robes of the Court. In Rule 55 of the Federal Rules of Civil Procedure, before a default judgment can be entered there must be jurisdiction, and this is stated as an example *Yox* v. *Durgan.* *(Yox* v. *Durgan,* D.C. Tenn 1969, 298 F.Supp. 1365). Service of Process must be according to state statute for a default judgment to be valid before it can be brought in a Federal Court.

The Petitioner filed a Petition for Rehearing, citing the above and other reasons on September 18, 1992 in a Petition for Rehearing. This was denied and the mandate subsequently filed. The Petitioner wrote the justices of the 4th Circuit to see and only to see if they received the Petition for Rehearing. So far, eight have responded saying they have. The serious part of all of this is the 4th Circuit Court has upheld a void default judgment in a state court where Service of Process was not according to law. Their exposure is obvious.

**AB Blood**

The record shows a long series of gross violations of due process as is customarily recognized in common law as mentioned in the VII Amendment of the Constitution, and

further, a child can see there is something wrong and there must be a plot behind the actions in the courts. Before going into this, there are a few points that need to be understood. The Petitioner has AB-rh negative blood. There are some 50,000 people in the world with this blood if one set of statistics is used and if another is used there are 150,000. No matter which one you take, there are not too many. It is believed that there is no AB+, as every time someone is found that has it, a check reveals that it is another type of blood, and besides the drug supply houses do not stock AB+. The Petitioner's wife Marie has AB- blood as does their child. The father and mother of the Petitioner have AB-, as do his grandparents. When the Petitioner discovered he had a child by his wife Marie in 1985, the following hypothesis was derived and tested by one of our well-known clinics. An AB male can only have children with an AB female and if he mates with A, B, or O nothing happens. Now an AB female can mate with an AB and have children, but she may also mate with A, B, or O and also have children. (There can in some cases be complications, but not often.) The reason for this is that the antigens and isoantibodies in the blood of an A, B, or O female will destroy the gift from the AB male in less than 60 minutes. The Petitioner was told that he was sterile by a handful of doctors deep within this conspiracy. That is all it took and he just never believed them. Not only is this blood type rare because of the mating phenomenon, it does some other things, and this has been brought about by the discovery. How does hereditary cancer, heart disease, diabetes, etc., get through this wall of protection? We have all seen the acceleration in genetics and DNA since this discovery by the Petitioner in 1987 on blood. The other is that all Royalty are supposed to have AB blood. This is easy to prove, as there has been a blood test for AB blood since about 5000 B.C. All that anyone has to do is take some blood from an AB individual, mix it with alcohol and let it dry on a white surface. AB blood is very high in iron, and that is why all AB people are highly anemic. When the blood dries because of the iron it will have a blue tint. Hence the words

"bluebloods." Christ had AB blood. At the crucifixion there was all kinds of blood from the crown of thorns, to the whip cuts, to the nail holes. It was easy for someone knowing the phenomenon to get some blood and run this simple test. Since the Romans put the *ihs* on the cross above his head (King of the Jews), it was probably the Romans who made the test. AB blood is a good way to determine if there is a pretender on the throne. George VI could not marry a commoner and have children. His AB blood would prevent it. His wife Elizabeth Bowes-Lyons, a commoner, had two girls, and it is known how this was done. The present Queen does not have AB blood and will not take a blood test. Her son Charles has type O and this does not fit. The Petitioner's wife Marie has AB blood and that is why there is a child. All the Romanoff's have AB blood, and Marie is the granddaughter of Nicholas II. One can falsify signatures and seals, but one's blood type is a signature that cannot be falsified. The inheritance of the Petitioner is tied to the descendancy of the AB blood. This is also of interest. Abraham had AB blood, as did Ishmael and Jacob. Juda the 4th son of Jacob took a Canaanite wife who did not have AB blood, and yet all the Israelites claim descendancy from Abraham. If there are some 35 million Israelis as their census states, and only 50,000 people with AB blood in the world, and Abraham had AB blood, something is wrong.

In 1952 when the Petitioner met his wife, Marie, there were only 3,000 people with AB blood in the United States. If half of them were women, then that would mean there were some 300 in the child-bearing years. Marie was 21. For the Petitioner to find one of 300 women in the U.S. to have a child by is astronomical odds. It had to be planned and there is indication it was.

**Gold**

To prove a point that there are unusual things that go on within the Federal Government, the following is inserted. In

1979 and/or 1980 during the last two years of the Carter administration, some 23 tractor trailer loads of gold bars were taken from Fort Knox, and they show up in the territory of the 26th Judicial District of Virginia. The bars are still there. Now someone has to know and who is it? First, there is something that needs to be noted. The amount of gold is 400 tons plus, estimated. Remove that amount and there is a big hole and it has to be replaced by a substitute or the missing gold will be quickly noticed. If one can take something out, then one can put something in. So probably gold-plated lead bars were substituted, and if that is so, it points to one place where they were made.

Edward Darling, the attorney in Wilkes-Barre, was a kingpin in the rackets, the drug business, and guardian of the Trust of the Petitioner. One thing you never do is go into the territory of another kingpin and start or do a criminal enterprise. That man will lop your head off, as you are causing a disturbance in his area. Darling, who died last May 17, 1991 on the visit of this Petitioner, just had to know about this gold. There is no way he did not know. Darling controlled the judges in Virginia through the railroad attorneys and the Federal judges as well. Translating this into a few who knew and there were others, the following had to know. A judge on the 26th JC of Virginia, the comptroller of the currency or someone next to him, and someone on this Court. That is not hard to figure out. The use of Archimedes' principle will determine the real gold bars, and that should be interesting. The real question is how much other gold is missing from Fort Knox? The Petitioner found it by accident when he was working on something else and wonders if it is part of the Imperial gold hoard of Russia. There is gold kept in Fort Knox that belongs to others, and this could be some of the gold that was taken. In time we all will know.

**The Money and Trusts**

In 1982 the Petitioner began investigating things in Pennsylvania about his grandfather. A Robert Teske, a former Jesuit Priest whom he had met through a law firm in Alexandria, went to Wilkes-Barre and found the Phelps-Bennett Trust in the last days of August 1982. This was before the Petitioner could go, as there were security reasons why he had to stay out of the area due to previous contracts on him. That fall Teske and the Petitioner combed the courthouses in that area of Pennsylvania. With Phelps, Sr.'s Masonic writings of a lot of things were discovered. This included the fact that Phelps, Sr. had come over to this country in 1871 with his wet nurse, Campbell and was raised as the youngest member of the Phelps family in Wilkes-Barre. It is because of his real mother that he was entitled to so much money and land. This was due to the Organic Act signed by William of Orange in 1694 and the subsequent amendments. The amount of money was 500 million dollars and many millions of acres. As Phelps, Sr. was born December 7, 1870, this money had to have guardians and this at first was the Phelps' and the Bennetts'. The Prime Minister Benjamin Disraeli made the arrangements and the money came over here slowly between 1871 and 1875. It mostly came over here as coal credits which were converted into assets. The land came from land held by the crown in this country before the revolution. This money came from a Christian monarchy and was Christian money to take care of Phelps, Sr. and create around him a Christian environment that would prosper. It did, and the money was invested in coal, steel, railroads, industry, etc. This money grew with the country and doubled every ten years. That is why it is such a huge sum. The Christians in Pennsylvania, New York, and the other states benefitted from these things and Phelps, Sr. lived in a place created by this Christian money. Teske went on to discover about 98 billion dollars worth of assets that are tied to this money, of which over 50% of the stock of the Pennsylvania is a small part. He said his estimate was there was 250 billion

in all and that was in 1983. Teske disappeared in about September of 1984. Whether he went back to the Jesuits and is cloistered or whether he met foul play is not known. However, his estimates appear to be very close.

Phelps, Sr. did not live in a grand style though he could have, and all his life he never told his grandson, this Petitioner anything about this money and his origins. In 1933 a Trust was created in which were put all of his assets and this trust was for the benefit of his grandson, the Petitioner. Since the Petitioner was only 4 years old at the time, there had to be guardians. One had to be Phelps, Sr., and the other was the law firm of Bedford, Waller, Griffith, Darling & Mitchel. Darling survived until May 17, 1991 and Mitchel is still alive. There will be more on Darling shortly.

What happened when the Russian Empire collapsed was that the gold in its treasury was divided and half came to this country and half went to Britain. Ships lay off Britain for months in 1918 until a Duke or above would sign for it, as in Britain a Duke or above cannot be sued. George V signed for the gold and it is in tunnels under the City, the banking district of London. Phelps, Sr. knew all about this, and maybe some of his money through Eugene Meyers went to aid the Bolsheviks. Whether it did or not Phelps, Sr. knew. When the Petitioner married the granddaughter of Nicholas II who was also Phelps, Sr.'s great grandniece, Phelps, Sr. must have had a fit. Then the Petitioner shows up on Phelps, Sr.'s doorstep with his bride just before he left for overseas. By having Marie insist on a divorce, Phelps, Sr. disqualified the Petitioner from the Trust and also protected the child. However, Phelps, Sr. ruined his power base as he had no surviving male heir. What Phelps, Sr. knew and how much he was deceived is hard to determine at this point, as he was getting into his senility. What the Petitioner found out on pulling the divorce papers is that he is still married to Marie, as the papers are faulted by failing to mention a child. This is the mystery behind the trust, and why Darling had so much

power. Since the crown or monarchy is not aware that there is a surviving heir, they are, through their agents trying to repatriate the money back to Britain. There are too many showings of MI-5 and those who have British leanings in this affair. This helps explain this tremendous effort by the U.S. Courts to deny this Petitioner his personal money by a case that involves maybe 24 thousand dollars. For the Petitioner this blocks his access to sell his subdivision and pursue the right to his trust. The Respondent has the Petitioner tied up. No judge or lawyer would put his career in jeopardy in what has taken place if there were not a whole lot more at stake. The Writ of Certiorari 90-101 is incorporated by reference and already filed in this Court, and referred to, as it expands on what has gone before.

**Edward Darling**

Though the matter of Edward Darling is well covered in the motion for rehearing in the U.S. District Court, here is an outline. Edward Darling, Esq. was guardian of the trust created for the Petitioner in 1933. This enormous amount of money gave him great power. This Petitioner called on Darling at 1:30 in the afternoon at his office in Wilkes-Barre. Since they were both related through Judge Darling of Reading, they talked family. In route to the subject that the Petitioner wanted to talk about, he brought up the fact that he had taken a keen interest in his grandfather's financial affairs because of all the contracts on his life. Darling looked funny and said "keen interest?". The Petitioner said, "Yes, you know my father was assassinated in Beloit, Kansas, and there have been many contracts on me." Darling turned sideways and said "contracts," and then threw his head back and started the death rattle. The Petitioner at first thought he was having an asthma attack and when it did not stop he went and got his secretary, who realized it was something else. She went and got the rescue squad, who arrived quickly. As it was a small office and was filling with people, the Petitioner left. Darling died. Later on, reflecting on what happened, the Petitioner

realized that Darling had put at least two contracts on him, and that when he brought up the subject of contracts Darling probably thought he was talking about the contracts he had put on the Petitioner. His mind ruptured when he believed he had been caught. On returning to Virginia many people talked, as they were longer beholding to Darling. The following year the Petitioner learned that Darling had arranged to put a contract on him when he left the office. Of course, Darling died and therefore could not give the signal to start the contract. In the eliminating of the coal operators and managers, Darling had used the Molly Maguires, the Sicilians, the pagans, the Jesuits, and others that do this work, so it was very easy for him to make these arrangements. With people talking, it was easy to learn who knew him and that he visited Front Royal often. Darling was a kingpin in the drug trade and in criminal activities. For those who know, Darling was second echelon in the drug trade. He controlled state and Federal courts in many states, and one of the states was Virginia. This is how this case has been so easily orchestrated. There have been some 16 assassinations in the Petitioner's family and it appears that Darling has figured in some 9 of them. He was a very controlled individual until the word 'contract' was said. Darling was also a graduate of Yale, the class of 1927, a Bones man, Phi Beta Kappa, member of the Yale drama school and a graduate of the Harvard Law School. He was more than just a lawyer. Working within the Petitioner's family, he wreaked havoc. Darling and the late John Foster Dulles in different areas worked out the supposed divorce of the Petitioner and his wife, Marie, for if the marriage stood Darling would lose control of the trusts. He was mister insider and known to Clark Clifford. There are some 496 million dollars, now much more than that, that was laundered through an insurance company in Missouri and shows up in Financial General, which became 1st American that BCCI bought or controlled. BCCI was trying to get this money.

## Reasons for Granting Certiorari.

This Petition for a Writ and the Writ 90-101 incorporated by reference are both steeped in judicial misconduct. The Writ 90-101 is corrupted because the U.S. Marshals, the administrative and enforcement arm of this Court, hold the wife of the Petitioner. That is a fact and agencies have lied about it. This Court and others knew it and denied the Writ. In this Petition for a Writ a trial was held in the 4th in secrecy, for the Respondent never filed an answer brief or registered an attorney. In the matter before the 4th, the Petitioner never faced his accusers and in essence the VIIth Amendment was abridged. The Petitioner asked that the case be heard orally and *in banc* so that a secret unpublished *per curiam* opinion could not happen. Judges were asked to recuse themselves because of prejudiciousness and involvement in the previous appeal. Two justices did not. This gives the appearance in the 4th that there are a limited number who will do this sort of judicial abuse.

In the U.S. District Court to which this matter was appealed, the Petitioner never was given the opportunity to present the case either by himself or by Counsel Sullivan. The Respondent never appeared in court and his only presence was by a response ordered by the court and a secret letter to the Judge. Add to this a secret memo delivered by the U.S. Marshals believed to come from this Court's Chief Justice's Office. In the Bankruptcy Court the Respondent made his only appearance and that is clouded as previously noted.

This is all over a default judgment void by Service of Process not being according to Virginia Statute. The Loudoun County Circuit Court does not have jurisdiction until there is proper service according to statute. There was none. Further, the matter is all over some $24,000.00 of penalties and interest, as the principal of the Respondents' note has been paid. The Petitioner has money to pay this, but all his assets are tied up by the void default judgment of the

Respondent. This is a clever maneuver by the Respondent to prevent the Petitioner from pursuing money in the Respondent's bank that is part of the Pennsylvania Trust belonging to the Petitioner. The Federal Courts have been asked to uphold a void default judgement in a Virginia Court which denies pursuit of a very large amount of money involved in an inheritance of the Petitioner. The denial is in violation of Rule 55 of the Rules of Federal Civil Procedure and contrary to *Yox* v. *Durgan* (D.C. Tenn 1969, 298 F.Supp. 1365).

Should this Court rule to deny this Petitioner, there is still the option to proceed in the Virginia Courts to void a default judgment where the Service of Process by posting is not done according to Virginia Statute. The order is void *ab initio* and supported by Virginia decision *Slaughter* v. *Commonwealth* (222 Va 787). Virginia courts do not generally use unpublished *per curiam* opinions in their decisions. It is not the intent to whipsaw the Federal and State courts in the matter of validity of a judgment, but because the Petitioner sought protection in the U.S. Bankruptcy Court from a creditor with a void judgment seeking to seize all his assets by a form of malicious prosecution, the option is here. The sole motive of the Petitioner is protection from a bank seeking to use legal process to cover up misuse of trust funds, and capture all the assets. The Respondent has been persistent.

None of this could have happened if there had been freedom of the press (First Amendment). Freedom of the press is a two-edged sword. The press must have freedom to print, yes. However, note this—the Petitioner has been denied the opportunity to buy space in the newspaper and time on the radio. Also the pilot for a book has been shunned by publishers though it is well written to strangle this information. Of interest, copies of the Writ are in the hands of the *Washington Post*. It is only in the atmosphere of secrecy this matter could happen in the courts. The *Post* has a vested interest in keeping this out of the media because of

Eugene Meyer's financing of the Bolshevik revolution in Russia.

To grant certiorari proves due process is still alive and since the word itself means for a superior court to call up the record from a lesser court, nothing is hurt when this court reviews the whole record. Then this court can decide on the merits and give an opinion, which has not happened before.

## Conclusion

This is a political court according to authority from the bank of Mellion, and therefore the Court has great breadth in its decisions. Within the framework of the Constitution, the Court's decisions can change the direction of social custom as controlled by law. Here we have a void default judgment being upheld by lower courts and the reason is the Respondents hold other trust money of the Petitioner. This limited action prevents the Petitioner access to money he has made in his lifetime, discredits him, and prevents the capture of his inheritance. That is reason enough to be upset and induce the Petitioner to bring about an overruling of the lower courts. This money in the inheritance is huge, and it further is Christian money that came from Britain for the benefit of a child under the Organic Act. The intent of this money coming to this country was to aid a Christian community that the child could live in. There are close ties of this money to England complicated by a pretender on the throne. There is no AB blood there. The repatriating of this money, which is now American capital, has taken many forms, and this case is one of them. There are too many people in high places involved in this whole affair for the above statement not to be true.

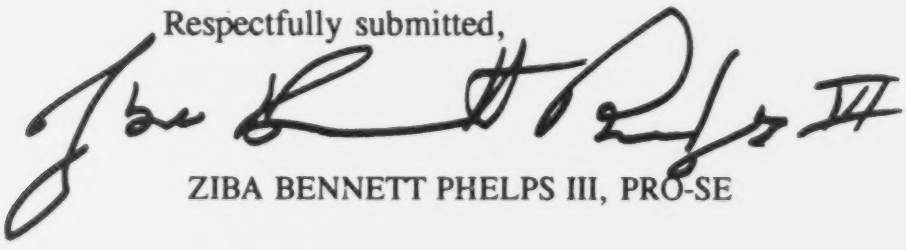
This is not 1990 and Soviet Russia has collapsed and many changes have occurred. These Writs are widely read and they

have more impact than a newspaper as they reach the intelligent and the movers of this country. Not to grant certiorari will cause trouble because of the holding of the Petitioner's wife, and further shroud this Court in a cloak of conspiracy. A conspiracy to take a large Christian inheritance, hold a wife for extortion, and invade the sanctity of marriage is the public perception of the case. To grant certiorari gives this Court a role of seeking truth, fairness and wisdom in justice. Often lost in the deifying of Christ is his depth of perception and contributions to law. The compassion in our laws has its origin in the teachings of Christ. With so much at stake for Christian capital, this petition for certiorari will show that there are forces other than greed and material gain.

Who is the force in the Courts, as the Respondent has never shown a presence and yet the decisions have gone in his favor? Who controls this Court? Is it local, European, or other? Granting certiorari puts them on hold as this Court seeks the answers to justice.

*Lux et Veritas.*

Respectfully submitted,



ZIBA BENNETT PHELPS III, PRO-SE

Aspen Hill Farms, Rt.3,

Front Royal, Virginia 22630

[redacted]

December ____, 1992

## APPENDIX A

UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

| | | |
|---|---|---|
| In re: | ) | |
| | ) | |
| ZIBA BENNETT PHELPS, III | ) | CASE NO. 86-01779-AB |
| | ) | |
| Debtor | ) | |

ORDER

THIS CAUSE came on to be heard on January 16, 1990, on the motion of the Debtor seeking a protective order against Sovran Bank N.A. and upon evidence and argument; and,

IT APPEARING TO THE COURT that the motion of the Debtor should be denied; it is, therefore,

ADJUDGED, ORDERED and DECREED that the motion of the Debtor is denied.

ENTERED this 16th day of January, 1990.

_____
UNITED STATES BANKRUPTCY JUDGE

I ask for this:

_____
Henry Counts, Jr.
100 South Royal Street
Alexandria, VA 22314
Counsel for Sovran Bank, N.A.

Seen and objected to:

_____
Ziba Bennett Phelps, III
Post Office Box 4021
Arlington, Virginia 22204
Debtor, pro se

## APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

| | | |
|---|---|---|
| ZIBA BENNETT PHELPS, III, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Civil No. 90-0114-A |
| | ) | |
| SOVRAN BANK, N.A., | ) | |
| | ) | |
| Defendant. | ) | |

ORDER

This matter is before the Court on plaintiff's appeal of a bankruptcy court order denying plaintiff's Motion for Protection from the actions of Sovran Bank, N.A.

In order to permit plaintiff to obtain counsel, plaintiff's appeal is **TAKEN UNDER ADVISEMENT.**

In the event that plaintiff obtains counsel, oral argument on this matter will be held at **10:00 a.m., Friday, June 28, 1991.** Thereafter, if no appearance by counsel is made, the Court will rule on this matter without further oral argument.

The Clerk is directed to send copies of this Order to all counsel of record.

T. S. Ellis, III
United States District Judge

Alexandria, Virginia
June 7, 1991

## APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

| | | |
|---|---|---|
| ZIBA BENNETT PHELPS, III. | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | CIVIL ACTION |
| v. | ) | No. 91-00114-A |
| | ) | |
| SOVRAN BANK, N.A., | ) | |
| | ) | |
| Appellee. | ) | |

ORDER

This matter came before the Court on Phelps' appeal of a bankruptcy court order denying his Motion for Protection from the actions of Sovran Bank, N.A. Appellee filed no briefs and entered no appearance at the hearing. Nor did appellee give the Court any reason for not doing so.

For the reasons stated from the bench, appellant's appeal is **HELD IN ABEYANCE** pending further submissions. The Court ORDERS as follows:

1. Appellee is directed to submit a written response to appellant's Trial Brief by 5:00 p.m., Friday, July 19, 1991. Thereafter, the Court will decide the matter without further oral argument.

2. Appellee is directed to submit a letter to the Court, also by 5:00 p.m., Friday, July 19, 1991, explaining its reasons for failing to file a brief or failing to appear at the July 12 hearing.

3. The oral motion to withdraw by Charles B. Sullivan, Jr., counsel for appellant, is **DENIED.**

The clerk is directed to issue copies of this Order to all counsel of record.

T. S. Ellis, III
United States District Judge

Alexandria, Virginia
July 12, 1991

## APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

| | | |
|---|---|---|
| ZIBA BENNETT PHELPS, III (BK 86-01779-A), | ) | |
| Appellant, | ) | CIVIL ACTION |
| v. | ) | No. 90-0114-A |
| SOVRAN BANK, N.A. (Formerly FIRST and MERCHANTS NATIONAL BANK), Appellee. | ) | |

ORDER

This matter is before the Court on appeal from the United States Bankruptcy Court for the Eastern District of Virginia. On the basis of a review of the entire record, the Court concludes that appellant's claims are meritless and that the appeal must be, and hereby is, **DENIED.**

The Clerk is directed to issue copies of this Order to all counsel of record.

T. S. Ellis, III
United States District Judge

Alexandria, Virginia
July 24, 1991

## APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

| | | |
|---|---|---|
| ZIBA BENNETT PHELPS, III, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | CIVIL ACTION |
| v. | ) | NO. 90-0114-A |
| | ) | |
| SOVRAN BANK, N.A., | ) | |
| | ) | |
| Appellee | ) | |

ORDER

This matter comes before the Court on appellant's Motion to Reconsider and Request for Rehearing with respect to the Court's denial of appellant's appeal of a bankruptcy court order.

Having considered appellant's memorandum and the arguments previously advanced by both parties, the court DENIES appellant's motion to reconsider. The Court further DENIES appellant's request for oral argument because the facts and legal contentions are adequately represented in the materials before the Court and argument would not aid in the decisional process.

The Clerk is directed to forward a copy of this Order to all counsel of record.

T. S. Ellis, III
United States District Judge

Alexandria, Virginia
August 20, 1991

**APPENDIX F**

FILED: October 10, 1991

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 91-2206

In Re: ZIBA BENNETT PHELPS, III,

Debtor,

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ZIBA BENNETT PHELPS, III,

Plaintiff - Appellant,

versus

SOVRAN BANK,

Defendant - Appellee.

**ORDER**

Appellant has filed a pro se motion for production of documents.

The Court denies the motion for production of documents without prejudice to renewal of the request in the appellant's brief.

For the Court - By Direction

JOHN M. GREACEN
CLERK

**APPENDIX G**

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**
**FOR THE FOURTH CIRCUIT**

In Re: ZIBA BENNETT PHELPS III,
*Debtor.*

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ZIBA BENNETT PHELPS, III,
*Plaintiff-Appellant,*
v.

SOVRAN BANK,
*Defendant-Appellee.*

No. 91-2206

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
T. S. Ellis, III, District Judge.
(CA-90-114-A, BK-86-1779-A)

Submitted: May 26, 1992

Decided: September 4, 1992

Before PHILLIPS, WILKINSON, and WILLIAMS, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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## COUNSEL

Ziba Bennett Phelps, III, Appellant Pro Se, Henry Counts, Jr., Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

## OPINION

PER CURIAM:

Ziba Bennett Phelps III appeals the district court's order denying his motion to reconsider that court's order affirming the bankruptcy court's order denying his Motion for Protection from Sovran Bank. Our review of the record discloses that this appeal is without merit.* Accordingly, we affirm the district court. *Phelps v. Sovran Bank*, No. CA-90-114-A (E.D. Va. July 24 and Aug. 20, 1991). We deny Appellant's motion for punitive sanctions. We dispense with oral argument because the facts and legal contentions are adequately represented in the materials before the Court and argument would not aid the decisional process.

*AFFIRMED*

*Appellee did not file a brief in this Court or in the district court maintaining the Appellant's motions were "silly" and that the district court and bankruptcy court lacked jurisdiction because the bankruptcy case had been previously dismissed. On a review of the entire record, we find meritless Appellant's argument that Appellee's default judgment rendered in state court was void *ab initio* for lack of personal jurisdiction over the Appellant.

## APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
September 29, 1992

No. 91-2206
CA-90-114-A

In Re: ZIBA BENNETT PHELPS, III

Debtor

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ZIBA BENNETT PHELPS, III

Plaintiff - Appellant

v.

SOVRAN BANK

Defendant - Appellee

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On Petition for Rehearing with Suggestion for Rehearing In Banc

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The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/S/ Bert M. Montague